

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 2:09-00137

JOSEPH CLEVELAND FERRELL

O R D E R

In aid and refinement of the court's calculation of the defendant's net worth as set forth on the record of the sentencing hearing on June 1, 2011, the court submits the following findings.

The court notes at the outset that the defendant has obtained a number of loans for the benefit of Southern Amusement Company, Inc., and has pledged his property or that of one or more of the entities he controls to secure those same loans. Southern Amusement is a financially healthy company that is readily capable of paying off all of those loans. The shares of stock of Southern Amusement were owned nearly equally by the defendant and his wife, Vicki Ferrell, until 2005 when the defendant's shares were transferred to his wife. The defendant continued in management of Southern Amusement, drawing

compensation for his services in the amounts of \$780,000 for 2007, \$988,000 for 2008, and \$240,000 for 2009, the year in which the defendant was first indicted in this case on June 3, 2009. A year later, on June 30, 2010, Vicki Ferrell withdrew \$2,230,263 from Southern Amusement.

Southern Amusement was deemed by the defendant in his submission to the Probation Officer on January 26, 2011, as having a net worth of \$15 million. The defendant now objects to that \$15 million evaluation as being excessive because a line of credit with McDowell County National Bank ("MCNB") was obtained by Southern Amusement in the amount of \$4.9 million (MCNB 4143450) in October 2010. In reality the \$4.9 million was arranged as a fund with which Southern Amusement could and did purchase the licensing from the State of West Virginia of 675 limited video lottery machines for the ten-year period beginning July 1, 2011, thereby succeeding without interruption the ten-year licensing period in which Southern Amusement conducted operations with those same machines from 2001 to 2011. The worth of the "routes" represented by the placement of those machines is appraised by an expert in that field at \$25 to \$30 million, being in addition to the buildings, vehicles, office assets and other property of the company. After taking into account its

liabilities, the current net worth of Southern Amusement is appropriately valued as \$20 million or more.

The defendant also presented statements to the probation officer on January 26, 2011, of his evaluation of his interest in three entities:

Southern Investments - 50%	\$544,000
L&J - 50%	\$100,000
The Oaks - 100%	(\$9,599)

The court, in determining the defendant's net worth, excludes from his indebtedness and that of his entities any debt incurred for and owing by Southern Amusement. The court finds the defendant's net worth from the following.

I. Real Estate

Defendant's $\frac{1}{2}$ interest in residence real estate at 259 Rocky Branch Road, Chapmanville, WV, the whole of which the defendant originally valued on January 11, 2011, at \$3,500,000 but has since presented a valuation based on an appraisal for a loan by Logan Bank & Trust ("LB&T") on October 13, 2010, showing a valuation of \$2,325,000. The court finds the fair market value to be \$3,000,000 of which the defendant's $\frac{1}{2}$ interest is \$1,500,000

Less two loans executed by Vicki Ferrell and secured by deeds of trust executed by defendant and Vicki Ferrell

LB&T # 1679700	\$295,301
LB&T # 4280997	<u>\$277,897</u>

$\frac{1}{2}$ of \$573,198	<u>\$ 286,599</u>
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\$1,213,401

Note: A third deed of trust loan on this same property in the amount of \$625,000 (LB&T # 4140907) is the primary obligation of Southern Amusement and is excluded

Defendant's $\frac{1}{2}$ interest in 258 Rocky Branch Road (the total value of which is \$139,500)	\$69,750
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Less $\frac{1}{2}$ deed of trust loan of \$26,894 (LB&T # 4308956)	<u>\$13,447</u>
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\$56,303

Net Real Estate	\$1,269,704
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II. Trusts

The defendant has established two purported irrevocable trusts of which his wife, Vicki, is trustee. Assets of the two trusts located on Circle Drive, Logan, West Virginia, have been joined in the course of borrowings against them, using property at 410 Circle Drive and 406½ Circle Drive as security. The trusts are designated as follows:

Joseph C. Ferrell Irrevocable Family Trust

Joseph C. Ferrell Irrevocable Trust

The court refers to the trusts, respectively, as family and non-family.

	Appraised Value		LB&T Lien Debt	Net
Lot 56 at 410 Circle Drive, Logan, WV (family)	\$305,000)		
Part Lot 55 at 406½ Circle Drive, Logan, WV (non-family) (LB&T 4141679)	\$ 60,000)	\$145,259	\$219,741

Excluded from lien indebtedness against those same two properties is an LB&T lien debt of \$391,091 for the loan obtained by Southern Amusement Company and Vicki Ferrell individually that is a debt owing by Southern Amusement.

	Appraised Value		LB&T Lien Debt	
9650 Shore Drive, Unit 1509 Myrtle Beach, South Carolina (non-family) (LB&T 4309111)	\$395,000		\$255,109	<u>\$139,891</u>
			Net Trusts Real Estate	\$359,632

Four life insurance policies on the life of the defendant, two of which with Mass Mutual may have been borrowed against to the point of leaving no appreciable value, and one of which, Integon Insurance, is of an unstated worth though subject to the same two loans secured by deeds of trust already deducted from the value of defendant's residence, and the last of which, Equitable, is subject to those same two loans as well as a third loan of \$59,681.51. Inasmuch as the true worth of these policies is not disclosed by defendant, they are listed here at no value.

On January 26, 2011, the defendant set forth the value of his interest in the trusts as being \$480,000. The court, based on the appraised values above aggregating \$760,000 and deducting the lien indebtedness of \$400,368, finds the net fair market value of the defendant's interest in the trusts is \$359,632. The defendant has repeatedly invaded the trusts to use the trust assets for such purposes as he sees fit. The court recognizes that not only the income but also the trust assets are available to the defendant as a practical matter at his direction.

III. Southern Investments

On January 26, 2011, the defendant set forth the value of his interest in Southern Investments, LLC, as being \$544,000. Based on the information furnished by the defendant in the form of a balance sheet as of December 31, 2010, the defendant had an ending capital account of \$386,741 whereas his 50% partner, being his son-in-law John Brammer, had an ending capital account of (\$28,649). Since that statement, the assets of Southern Investments as of April 1, 2011, have apparently changed markedly from that shown on the December 31, 2010, balance sheet. What is known is that Southern Investments owns the following assets subject to the designated lien indebtedness.

	Appraised Value	LB&T Lien Debt	
945D Rosencrans Lane Myrtle Beach, SC LB&T # 4138996	\$290,000	\$234,478	\$ 55,522
Hilliard Lyons Investment Acct. # 63429549 (stocks and bonds)	\$961,187	\$563,149*	\$398,038
*Lien Debt	Dated		
LB&T # 2385600		\$200,160	
LB&T # 2401800	2/28/11 - for Oaks	\$ 50,575	
LB&T # 4140958		\$162,308	
LB&T # 4143450	5/6/11 - for Oaks	<u>\$150,106</u>	
		\$563,149	
	Net Southern Investments		\$453,560

Excluded is an LB&T lien debt of \$446,006 that was created with an original loan of \$625,000 (LB&T 4141040) on February 7, 2011, for the benefit of Southern Amusement which served to pay off a McDowell County National Bank loan that is not otherwise described by the defendant. Although the defendant has valued his interest in Southern Investments at \$540,000, the court finds the worth of his interest to be \$386,741 as indicated by his capital account.

IV. L&J Holding

With respect to the defendant's 50% interest in L&J Holding, LLC, which is another company that the defendant shares with his son-in-law John Brammer, the defendant has evaluated his interest on January 26, 2011, as being \$100,000. The court limits the worth of his interest as being the equivalent of his ending capital account of \$49,616 (erroneously calculated at \$41,812 in defendant's submissions) as of December 31, 2010, at which time his partner's capital account was (\$3,902).

Net L&J	\$49,616
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V. The Oaks

The Oaks, LLC, is an entity owned entirely by the defendant who acquired his partner's 50% interest therein on July 2, 2010, for \$150,000. The defendant on January 26, 2011, evaluated his interest as being (\$9,599). The Oaks is a plaza mall in Logan, West Virginia, the construction of which was completed in mid-May 2011. It is now 85% occupied. During the past two years or so, the defendant has poured substantial funding into The Oaks including the following items of lien indebtedness which aggregate \$5,342,482 as shown on the balance sheet for The Oaks as of December 31, 2010:

Bank of Mingo	# 32032	\$1,000,000
LB&T	# 41410709	\$ 437,954
MCNB	# 10007125	\$ 200,000
MCNB	# 10007013	\$ 79,314
MCNB	# 10007127	\$ 150,000
LB&T	# 4139194	\$ 190,144
MCNB	# 8004164	\$3,285,069
		<hr/> \$5,342,481

An additional debt of The Oaks is the sum of \$655,127 owing to the defendant as of December 31, 2010 (though defendant says it is \$901,108 as of April 29, 2011). The defendant now contends that there are four items of lien debt of The Oaks that were omitted from his earlier filed statement aggregating \$5,342,481 as above, consisting of:

	<u>Dated</u>	<u>Balance</u>
LB&T 411221	12/31/08	\$ 62,601
Citizens National Bank 27507	c. 6/09	\$364,059
Bank of Mingo 32032 (Note: \$1 million was listed above but defendant now says the total is \$1,516,232)	3/2/09	\$516,232
		<hr/> \$942,892

The fourth such loan is LB&T 4141679 dated January 8, 2010, with a balance of \$145,259. It is excluded in that it is amply secured by the Circle Drive property owned by the trusts, as set forth under Trusts above.

Inasmuch as the defendant values his interest in The Oaks in his January 26, 2011, submission to be (\$9,599) and inasmuch further as the defendant had purchased the 50% interest of his partner in The Oaks eleven months ago for \$150,000, the court determined his 100% interest to be of zero rather than negative value. To do so, however, requires the application of the \$655,127 (owing by The Oaks to the defendant) against the defendant's negative capital account in The Oaks, being (\$518,661) as reflected on The Oaks balance sheet of December 31, 2010. That adjustment would leave a balance of \$136,466 owing to the defendant by The Oaks. The three lien debts aggregating \$942,890 that were omitted by the defendant from the December 31, 2010, account statement of The Oaks are accepted for purposes of this accounting by deducting that amount in the course of arriving at the defendant's net worth set forth below.

VI. Summary

The defendant's net worth is calculated as follows:

I.	Real Estate at 258 and 259 Rocky Branch Road	\$1,269,704
II.	Trusts	359,632
III.	Southern Investments - 50%	386,741
IV.	L&J - 50%	49,616
V.	The Oaks	-0-
VI.	Miscellaneous	
	The Oaks - Receivable	\$136,466
	Jewelry	173,000
	Cash and checking accounts	19,795
	½ Household items	<u>22,000</u>
		\$ 351,261
	Total Net Assets	\$2,416,954

VII. Indebtedness

Unsecured

Credit card/revolving charge accounts	
Self	\$ 80,050
½ with wife	<u>2,530</u>
	\$ 82,580

Secured - The Oaks

(LB&T, Citizens National Bank, and Bank of Mingo)	<u>\$942,890</u>
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Total Net Liabilities	<u>\$1,025,470</u>
Net Worth	<u>\$1,391,484</u>

The foregoing takes into account all thirteen of the indebtedness items set forth at pages 2 through 9 of the Defendant's Response to Supplement to the Addendum to the Presentence Report, filed May 24, 2011.

The Clerk is directed to forward copies of this order to the defendant, all counsel of record and the United States Probation Department.

DATED: June 17, 2011



JOHN T. COPENHAVER, JR.
United States District Judge